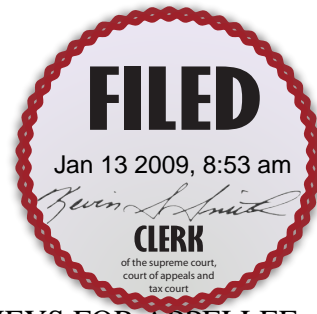


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY L. GLEASON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0806-CR-309

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0610-FD-868

January 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Jeffrey L. Gleason appeals his conviction for class D felony theft, claiming that the evidence is insufficient to sustain it. We affirm.

On October 5, 2006, Fort Wayne Police Department Sergeant John Shank was working off-duty as a contract security officer for Scott's Food and Pharmacy ("Scott's"). That afternoon, Gleason entered the store wearing a vest and button-down shirt, both of which were unbuttoned and cinched tightly with his belt. He did not select a shopping cart or basket and had nothing in his hands. Sergeant Shank watched as Gleason walked to the health and beauty section of the store and placed several bottles of Axe shower gel, Axe deodorant, and Axe body spray in the sides and back of his shirt. Gleason then walked toward the front lobby of the store, passing all points at which he could have paid for the items.

Sergeant Shank stopped Gleason before he reached the lobby and accused him of taking merchandise without paying for it. He placed Gleason under arrest, at which time Gleason said, "Search my vest. I don't have anything." Tr. at 72. Sergeant Shank discovered sixteen Axe products with a total value of \$76.60 in Gleason's shirt. State's Exh. 1. On October 11, 2006, the State charged Gleason with class D felony theft. On March 6, 2008, a jury found Gleason guilty as charged. On April 4, 2008, the trial court sentenced Gleason to two years. This appeal ensued.

Gleason contends that the State failed to present sufficient evidence to sustain his conviction. Specifically, he directs us to the charging information, which alleges that Gleason "did knowingly or intentionally exert unauthorized control over the property of

Scott's Food & Pharmacy, to wit: miscellaneous items of merchandise, with intent to deprive Scott's Food & Pharmacy of any part of its value or use of said property[.]” Appellant's App. at 28-29. Gleason argues that because he was arrested before leaving Scott's, the State failed to prove that he had the “intent to deprive” Scott's of the merchandise.

Our standard of review for a challenge to the sufficiency of the evidence is well settled.

When reviewing claims of insufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. Rather, we examine only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. It is the function of the trier of fact to determine the weight of the evidence and the credibility of the witnesses and as a result, the jury is free to believe whomever they wish.

Where circumstantial evidence is used to establish guilt, the question for the reviewing court is whether reasonable minds could reach the inferences drawn by the jury; if so, there is sufficient evidence.

Klaff v. State, 884 N.E.2d 272, 274 (Ind. Ct. App. 2008) (citations and quotation marks omitted).

The State presented evidence that Gleason entered the store with his shirt and vest unbuttoned, that he concealed sixteen items of merchandise within his shirt, and that he passed every possible point of payment before Sergeant Shank stopped him. Reasonable minds certainly could have concluded that Gleason intended to deprive Scott's of the merchandise Sergeant Shank discovered in his shirt. The evidence is sufficient to sustain his conviction.¹

¹ Gleason attempts to distinguish another theft case, *Johnson v. State*, 413 N.E.2d 335 (Ind. Ct. App.

Affirmed.

ROBB, J., and BROWN, J., concur.

1980) in which Johnson was convicted of theft even though she had just exited the store's dressing room when the sales clerk retrieved several items of merchandise from her tote bag. She and her shopping companion then left the store, and the sales clerk called the police. Gleason claims that the facts of that case show that the women "inten[ded] to leave the store with the pilfered items but for the actions of the store clerk[.]" whereas Gleason "was never given the opportunity to leave the store with the items ultimately found in his possession, nor was he given the opportunity to pay for the items." Appellant's Br. at 13.

In fact, we view *Johnson* as favorable to the State's position in the instant case because Johnson was deemed to have the intent to deprive the store of goods when she had barely left the dressing room with concealed merchandise, while Gleason had passed every place in the store where he could have paid for the Axe items when he was stopped. As the State points out, *Johnson* shows that evidence of a defendant's act of concealing merchandise, with nothing more, can give rise to a reasonable inference of the defendant's intent to deprive.